No. 80-958

In the Supreme Court of the United States

OCTOBER TERM, 1980

HOPLAND NOKOMIS ASSOCIATION, ET AL., PETITIONERS

v.

JAMES G. WATT, SECRETARY OF THE INTERIOR, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Whether the district court properly exercised its discretion in denying petitioners' motion to reopen a judgment.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. A-1 to A-3) and the judgment orders of the district court (*id.* at A-4 to A-11) are not reported.

JURISDICTION

The judgment of the court of appeals was entered on September 12, 1980. The petition for a writ of certiorari was filed on December 11, 1980. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

In 1961, the Secretary of the Interior purported to terminate the Hopland Indian Rancheria, a tribal reservation, in accordance with the California Rancheria Act, Pub. L. No. 85-671, 72 Stat. 619, as amended by Pub. L. No. 88-419, 78 Stat. 390. Pursuant to the termination plan, the United States conveyed certain property previously held in trust for the common benefit of the Rancheria members to petitioner Hopland Nokomis Association. In 1974, however, a number of Hopland Indians ("the respondents") filed this suit in the United States District Court for the Northern District of California, claiming that the termination plan had failed to provide for a water system, as required by Section 3(c) of the Act. They sought a declaration that the Rancheria had not been terminated and that the United States still owed a trust obligation to the Rancheria. In addition, respondents requested that the court cancel the deed held by the Association to the commonly held property (Pet. App. A-1 to A-2, A-14 to A-17, A-23 to A-27).

Counsel for all parties, including petitioners, initially agreed that the action should be submitted to the court on a stipulated statement of facts. Respondents and the Secretary subsequently filed an agreed statement of facts, which petitioners refused to join. Thereafter, based on the stipulation and petitioners' failure to demonstrate the existence of

any disputed material issue of fact, the district court granted respondents' motion for summary judgment and declared the termination of the Hopland Rancheria invalid. Rather than return the communal property to the United States, however, the district court directed the Secretary to conduct a referendum in which the Hopland Indians could choose between continued ownership of the property by the Association or reconveyance to the United States as trustee (Pet. App. A-1 to A-2, A-25 to A-27). In August 1978, following consultation with all of the parties, the court issued a judgment order setting forth the ballot language and the conditions for voter eligibility (*id.* at A-29 to A-31). Petitioners did not object to the ballot language and did not appeal from this final order.

The referendum was held on April 22, 1979, and the Indians voted 52 to 5 to reconvey the communal property to the United States as trustee. Petitioners did not raise any objection to the ballot itself, the tabulation, or any other aspect of the referendum, and again did not attempt to appeal the original judgment. Petitioners nonetheless refused to convey title to the United States. Accordingly, on July 25, 1979, the Secretary filed a motion for entry of an order conveying title to the disputed lands to the United States. See Fed. R. Civ. P. 70. Petitioners opposed the motion and moved to reopen the judgment on the ground that the election had been improperly conducted. Based on its examination of the various affidavits submitted by the parties and the election results and records, the district court denied petitioners' motion to reopen the judgment and entered a judgment vesting title in the United States as trustee (Pet. App. A-4 to A-11).

The court of appeals summarily affirmed (Pet. App. A-1 to A-3). The court considered petitioners' collateral attack on the referendum as a motion to reopen the judgment under Fed. R. Civ. P. 60(b). Concluding that the election

had been properly held, the court determined that the district court did not abuse its broad discretion in declining to reopen the judgment (Pet. App. A-2 to A-3). Accordingly, the court of appeals affirmed the judgment order of the district court vesting title to the communal property in the United States.

ARGUMENT

The decision of the court of appeals is correct, and does not conflict with any decision of this Court or of any court of appeals. Moreover, the decision below lacks general significance and is tied to the unique facts and proceedings in this case. Hence, further review by this Court is unwarranted.

1. Petitioners seek to challenge (Pet. 4-13) the referendum among the Hopland Indians in which that tribe voted overwhelmingly to reconvey their communal lands to the United States as trustee. But petitioners failed to attack either the ballot or the election itself in a timely fashion. Thus, as the court of appeals concluded (Pet. App. A-2 to A-3), the sole issue on this appeal is whether the district court abused its discretion under Rule 60(b) of the Federal Rules of Civil Procedure in declining to reopen the judgment underlying that election. See *Browder* v. *Director, Ill. Dep't of Corrections*, 434 U.S. 257, 263 n.7 (1978); *EEOC* v. *Safeway Stores, Inc.*, 611 F. 2d 795, 799 (10th Cir. 1979), cert. denied, No. 79-1393 (May 19, 1980); *Fuhrman* v. *Livaditis*, 611 F. 2d 203, 204 (7th Cir. 1979). No abuse of discretion occurred here.

The ballot language that petitioners now claim is confusing was initially set forth in an order of the district court dated August 3, 1978. Petitioners, who were parties to the litigation and who were consulted about the wording of the August 3 order, fail to explain why they did not challenge that order on direct appeal, but rather waited almost a year

before raising their claims as a defense to the government's motion to convey title. Likewise, petitioners offer no explanation for their failure to seek immediate review of the election results and proceedings. In the absence of newly discovered evidence or other compelling circumstances, the courts below correctly declined to entertain petitioners' belated collateral attack on the referendum and underlying August 3 judgment. See, *e.g.*, *Jafree* v. *Scott*, 590 F. 2d 209, 211-212 (7th Cir. 1978); *Jennings* v. *Hicklin*, 587 F. 2d 946, 947-948 (8th Cir. 1978); *United States* v. *Russell*, 578 F. 2d 806, 807 (9th Cir. 1978); *Boughner* v. *Secretary of HEW*, 572 F. 2d 976, 978 (3d Cir. 1978).[1]

2. In any event, petitioners' claims concerning the referendum are insubstantial. Notwithstanding petitioners' belated suggestions concerning the misleading nature of the ballot, that ballot plainly informed the voters of their choice to "reconve[y the communal property] to the United States in trust for the Indians of the Hopland Rancheria" or to permit "[t]itle to the * * * property * * * [to] remain with the Association" (Pet. 5). Moreover, contrary to petitioners' claim (Pet. 8), the Indian voters had advance notice of the election issue and the ballot. On December 11, 1978, four months before the election, the Bureau of Indian Affairs sent all eligible voters a notice of the referendum paraphrasing the two options set forth in the judgment. In addition, copies of this notice were posted in various places within the Rancheria. See Affidavit of Norman L. Sahmount, Bureau of Indian Affairs, excerpt of record, at 152-154, 176-177.

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[1]The court of appeals also correctly observed (Pet. App. A-3) that petitioners failed to seek administrative review of the election results and thus may not be heard to complain.

Petitioners also suggest (Pet. 9-13) that there is substantial evidence demonstrating the voters' actual confusion about the referendum. But the sole statement supporting this claim is the affidavit of only one of the approximately 60 eligible Indian voters (see Pet. 9). The other statements and events cited by petitioners are irrelevant. For example, Angelo Knight's letter concerned the status of noncommunal Indian lands that were not the subject of the referendum, and John R. Worlund was not an eligible voter (see Pet. 11-12). Similarly, petitioners do not explain how the apparent hostility of some of the voters to petitioners demonstrates the voters' confusion. Particularly in light of the overwhelming vote (52 to 5) in favor of reconveying the lands to the United States as trustee, the courts below correctly concluded that there is no evidence that the election was improperly conducted or that the voters were confused (Pet. App. A-3, A-7 to A-8, A-10 to A-11). Further review of this narrow factual question is unwarranted. See *Berenyi* v. *Immigration Director*, 385 U.S. 630, 635 (1967).[2]

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[2]Petitioners' novel constitutional claim (Pet. 13-14) that an unintentionally confusing ballot automatically violates the due process rights of Indian voters is not supported by any of the authorities cited by petitioners. See also *Mobile* v. *Bolden*, 446 U.S. 55 (1980). We further note that this claim is not properly presented here, since petitioners failed to raise this claim on direct appeal and since petitioners have failed to demonstrate that the voters were in fact confused.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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JANUARY 1981